IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 98 OF 2005

1. MR. G. M. GIDWANI (since deceased)

2. MRS. GOPI GIDWANI(Aged 63 years)

residing at 2nd floor, Plot 459)

24th Road, TPS III, Bandra (W))

MUMBAI 400 050.)

2a. VINOD GULABRAI GIDWANI)

Residing at 2nd floor, Plot 459)

TPS III, 24th Road, Bandra (W))

MUMBAI 400 050.)

2b. RENUKA K. BHAVNANI)

204 Belscot Building,)

Lokhandwala Complex, Andheri (W))

MUMBAI 400 058.)

2c. MRS. POOJA D. ADVANI)

residing at 19, Rita Lane,)

Lagrangeville)

NEW YORK 12540 USA)

2d. ANIL G. GIDWANI)

residing at 2nd floor, Plot 459)

24th Road, TPS III, Bandra (W))

MUMBAI 400 050.)

vs

SMT. SHANTA P. WADHWA (also

known as Ms. Shanta Mhatre))

residing at Flat No. 4, Plot 459,)

24th Road, TPS III, Bandra (W),)

MUMBAI 400 050) ..) ..RESPONDENT

Mr. Anil G.Gidwani (petitioner 2 (d) in person).

Mr. A. K. Abhyankar for respondent

CORAM:-SMT. RANJANA DESAI, J.

DATED:-19-1-2005

P.C.

In this writ petition the petitioner who is original plaintiff 2(d) ("the

plaintiff" for convenience) has challenged order dated 30th October, 2004 passed by the Small Causes Court at Mumbai, on Interim Notice No. 1967 of 2004 in R.A.E. Suit No. 300/838 of 1994. This notice is taken out by the plaintiff praying that amendment to the plaint as laid down in Schedule A in respect of the subsequent events be allowed.

2. I have heard at some length the plaintiff in person. I have also heard Mr. Abhyankar, learned counsel appearing for the respondent-defendant.

3. It is an admitted position that the suit is filed against the defendant-tenant for possession of the suit premises on the ground of nuisance, change of user, permanent construction and subletting. It is also an admitted position that in the year 1993, this Court has made the suit time bound and I am informed by the parties that as per the High Court's order, the suit has to be decided by 5th of February, 2005.

4. In February, 2004 plaintiff 2 has filed his affidavit of examination-in-chief. In June, 2004 the trial court passed an order exhibiting the documents. According to the plaintiff since certain documents pertaining to subsequent events were not exhibited, he applied to the trial court that they may be exhibited. That application was rejected. He preferred a review application

against the said order of the trial court. On 23rd of September, 2004 the trial court held that the review was not maintainable.

5. Admittedly the plaintiff did not challenge that order. According to him two courses were open to him; one was to challenge the order denying review or to make an application for amendment of his plaint so that those documents could be brought on record. He chose the later. He filed the application for amendment on 23-9-04.

6. The trial court by a detailed judgment and order has rejected the said application. The plaintiff assails the said order on several counts. He contended that the trial court has placed reliance on the judgments which in fact are not applicable to the case at all. He submitted that it is time and again laid down by the courts that an amendment application can be granted at any stage of the proceedings. The learned trial Judge, therefore, erred in rejecting the application. He further contended that the trial court erred in holding that the plaintiff has referred to certain facts in his evidence without there being pleadings. He contended that the trial court erred in observing that in his affidavit in examination-in-chief filed on 16th February, 2004, the plaintiff has referred to all the facts which he intends to add by way of the present amendment so as to bring them within the perview of pleadings in

respect of which he has already led evidence. According to the plaintiff his review application was wrongly rejected and, therefore, he has filed the present application to amend the plaint so that certain vital subsequent events and also certain vital documents which are necessary for the proper determination of points in issue should be brought on record. He drew my attention to certain letters which are referred to in Schedule 1 of his affidavit dated 16th February, 2004 which are not subsequent and he says that by reason of rejection of his application it will not be possible to bring those documents on record. He, therefore, contended that the trial court committed grave error in rejecting his application.

7. I have also heard Mr. Abhyankar, learned counsel appearing for the respondent-defendant. He contended that this application is nothing but an attempt to procrastinate the suit. He submitted that the High Court has made the suit time bound. The matter is fixed for cross-examination of the plaintiff today, and, therefore, this writ petition is filed to delay the suit.

8. The learned counsel further contended that in the facts of this case the trial court has rightly rejected the application because by amendment the plaintiff is trying to bring on record certain facts in respect of which he has already led evidence but which he has not included in his pleadings. In any

event it is not as if the said facts are not brought on record the trial court will not be able to pass a decree. In this connection the learned counsel relied on a decision of the Supreme Court in Om Prakash Gupta v. Ranbir B. Goyal, A.I.R. 2002 S. C. 665.

9. I have carefully considered the submissions of the learned counsel. It is true that generally in case of amendment application, the courts are liberal but in this case, in my opinion, the trial court has rightly rejected the application. The suit is made time bound by the High Court and it has to be concluded by 5th of February, 2005. It is true that that cannot be the only consideration which should weigh with the court while considering the amendment application because if an amendment is necessary for the proper determination of the suit it must be granted and in a given case the time for disposal of the suit might have to be extended. But in my opinion, such is not the case here.

10. Admittedly the review application filed by the plaintiff was held not maintainable on 23rd September, 2004. If the plaintiff was aggrieved by that order he ought to have challenged that order. He has not challenged that order. He cannot get over that inaction on his part by filing such amendment application. So far as amendment application is concerned, the amendment

application was rejected by the trial court as far back as on 30-1-04. The plaintiff ought to have approached this court immediately, particularly when he is very much aware that the High Court has expedited the suit and made it time bound and it has to be disposed of by 5th February, 2005. However, the writ petition is filed on 17th of January, 2005. This delay in approaching this court makes a dent in the plaintiffs' case that the amendment is absolutely necessary for proper determination of the suit.

11. In Om Prakash Gupta's case (supra)the Supreme Court has considered the question of amendment of pleadings to bring on record subsequent events. After taking a resume of the relevant cases on the point the Supreme Court has observed that ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the court has power to take a note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied;

i) that the relief as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted;

ii) that taking note of such subsequent event or changed circumstances

would shorten litigation and enable complete justice being done to the parties;

iii) that such subsequent event is brought to the notice of the Court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise.

The plaintiff's case does not fall in any of the categories mentioned above.

12. In the same judgment the Supreme Court referred to its judgment in Pasupuleti Venkateswarlu v The Motor & General Traders, A.I.R. 1975 S C 1409, where the Supreme Court has held that a fact arising after the lis, coming to the notice of the court and having a fundamental impact on the right to relief or the manner of moulding it and brought diligently to the notice of the court cannot be blinked at. The Supreme Court noted the guiding principles in thefollowing manner:-

i) the event should be one as would stultify or render in ept the decretal remedy,

ii) rules of procedure may be bent if no specific provision of fair play is violated and there is no other special circumstance repelling resort to that course in law or justice;

iii) such cognizance of subsequent events and developments should be cautious and;

iv) the rules of fairness to both sides should be scrupulously obeyed.

13. In this case one of the grounds of the suit is nuisance. By way of amendment, the petitioner is trying to bring on record certain alleged instances which according to him constitute nuisance. It is not possible to hold that if this amendment is not allowed to be introduced it would be difficult for the trial court to pass the decree on the basis of existing pleadings, if case is made out on that basis. Besides as observed by the Supreme Court the subsequent events have to be brought to the notice promptly. It is pertinent to note that in the amendment the plaintiff has referred to criminal complaint No.608/S/2001. The plaintiff has also referred to certain alterations allegedly carried out by the defendant in 1993 and a demolition notice allegedly served by the B.M.C. on the defendant on December 8, 2000. Viewed in the light of the judgment of the Supreme Court in Om Prakash Gupta's case (supra)in my opinion, amendment application has rightly been rejected.

14. I may note that the trial court has observed that though the trial is made

time bound, the parties are delaying the disposal by making applications after applications. The plaintiff says that the delay is not caused by him, Mr. Abhyankar says that the delay is not caused by the defendant. I do not wish to opine as to who is delaying the disposal of the suit. But let it be understood by the parties that, if the High Court has made suit time bound, it is the duty of the parties to see to it that the suit is disposed of within time frame laid down by the High Court.

15. With this observation, the petition is disposed of.

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